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RECENT IMPORTANT DECISIONS

BANKS AND BANKING—NEGOTIABLE INSTRUMENTS—INDORSEMENT OF FORGED CHECK.—Plaintiff, knowing that the one who signed the drawer's name was not the drawer herself, but not knowing further of signer's lack of authority, presented a check drawn on defendant bank in which bank the supposed drawer had an account but not sufficient to cover the check. The check was payable to plaintiff and indorsed by him and was placed to his credit in the bank. After discovering the forgery defendant charged the check to plaintiff's account. Plaintiff objected to such charge. *Held*, that the defendant might repudiate the payment as the plaintiff was not a bona fide holder within the general rule. *Woodward v. Savings and Trust Co.* (N. C., 1919), 100 S. E. 304.

The proposition for which the plaintiff contended is unquestionably supported by the weight of authority. The doctrine was first adopted by Lord Mansfield in *Price v. Neal*, 3 Burr. 1354, and was followed by Justice Story in *Bank of U. S. v. Bank of Georgia*, 10 Wheat. 333. See also *Bank v. Burkhardt*, 100 U. S. 686, 25 L. Ed. 766; *American Exchange Bank v. Gregg*, 138 Ill. 596, 28 N. E. 839, 32 Am. St. Rep. 173. There is no distinction between the case of a holder before and after acceptance. *Bank of U. S. v. Bank of Georgia, supra*; *National Park Bank v. Ninth National Bank*, 46 N. Y. 77. The reason of the rule seems to rest on the presumption that a bank knows the signature of its customers and likewise upon convenience in commercial transactions. *Bank of U. S. v. Bank of Georgia, supra*. However there are several qualifications to this rule, of which the principal case is a fair illustration. The holder must be bona fide, guilty of no actual or constructive fraud or negligence contributing to the mistake. *Smith v. Mercer*, 6 Taunt. 76; *Leather Manufacturers' Bank v. Morgan*, 117 U. S. 96. In the principal case the plaintiff was not such a holder. A party who demands re-payment after discovering the forgery must act promptly. *Levy v. Bank of U. S.*, 4 Dallas 234; *Bank of U. S. v. Bank of Georgia, supra*. The general rule is clearly at variance with the principle that money paid under a mistake of fact may be recovered. This the courts have not failed to recognize. The soundness of the doctrine is questioned by Mr. Daniels in his work on NEGOTIABLE INSTRUMENTS, vol. 2, Sec. 1361, in which a distinction is drawn between the case of an accepted and an unaccepted bill. Mr. Daniels points out that when the holder of an unaccepted bill presents the bill for payment the holder stands to the drawee as a warrantor of the genuineness of the bill by his indorsement or by the very assertion of ownership, and that the acceptor should be allowed to recover the amount paid, provided he acts with due diligence after learning that the bill is a forgery. In support of this view the following cases are cited. *First National Bank of Crawfordsville v. First National Bank of Lafayette*, 4 Ind. App. 35; *Warren-Scharf Asphalt Paving Co. v. Commercial Bank*, 97 Fed. 181. See also, *Ellis and Morton v. Ohio Life Insurance and Trust Co.*, 4 Ohio St. 628. These authorities can hardly be said

entirely to support the contention of Mr. Daniels but they indicate that the general rule is by no means decisive in favor of the payee of a forged check or bill to which he has himself given credit by his indorsement. See also 13 MICH. L. REV. 602; 14 MICH. L. REV. 151.

BOUNDARIES—LINE MARKED AND SURVEYED PREVAILS OVER DESCRIPTION IN DEED.—Defendant and M, tenants in common, agreed to partition; they employed a surveyor to run the division line, which was done in presence of the co-owners. The deed of partition, however, described a line not in accord with the one marked out. In action by M's remote grantee to establish the boundary according to the deed, *held* the following instruction was correct: “* * * where, with a view to making a deed or a division, the parties go upon the land and have a line marked and surveyed, intending it to be the line and to be included in the deed, then the line so surveyed and marked prevails against the description in the deed where there is a difference between them.” *Dudley v. Jeffress* (No. Car., 1919), 100 S. E. 253.

It is familiar and sound doctrine that where calls in a deed for monuments conflict with other calls the former shall in general prevail. *Hoban v. Cable*, 102 Mich. 206; *Whitehead v. Ragan*, 106 Mo. 231. And the rule is very properly applied where the deed calls for monuments which are not then in existence but which the parties later set. *Makepeace v. Bancroft*, 12 Mass. 469; *Lerned v. Morrill*, 2 N. H. 197. Cf. *Cleaveland v. Flagg*, 4 Cush. 76; *Miles v. Burrows*, 122 Mass. 579. Some courts have gone beyond this. For example, in *Burkholder v. Markley*, 98 Pa. 37, in an action of trespass the turning point was the proper location of a boundary line; if the line was to be run according to the calls in the deed, the defendant had trespassed; but if the true division line was one marked out by the parties on the land itself, then no trespass had been committed. The court held evidence should have been admitted as to the line actually marked out. *Emery v. Fowler*, 38 Me. 99, is to the same effect. It is this doctrine which is announced in the principal case. In an action to reform the deed or to establish a boundary line by acquiescence (see *Gertzer v. Kammerer*, 13 Phila. 190), such evidence would seem entirely proper. Since, however, land can be conveyed only by deed—or at least by a writing—it is submitted that the doctrine applied in the principal case goes a step too far.

CARRIERS—LIVE STOCK—INTERSTATE SHIPMENT—LIMITATION OF LIABILITY—TRANSPORTATION—TIME FOR CLAIM.—Plaintiff shipped a carload of horses from Texas to New York under a contract, *inter alia*, limiting the railway's liability to damages caused in actual transportation, claims for which were presented within five days. After arrival at destination and process of unloading under control of plaintiff had commenced the car was struck by another car and several of the horses were injured. *Held*, Clarke, McKenna, Brandeis and Day, JJ. dissenting, the car was still in transit and the provision as to notice applied. *Erie R. Co. v. Shuart* (1919), 39 Sup. Ct. 519.

On the question of notice where the injury is caused while the goods are still represented by the bill of lading, see 17 MICH. L. REV. 420, where a sim-